

STATE LAND USE PLANNING ADVISORY COUNCIL

Minutes
October 20, 2006

Meeting Location

*Douglas County Administration Building
(Old Courthouse)
1616 8th Street
Minden, Nevada*

Members Present

Juan Guzman/Pete Livermore Carson City
Eleanor Lockwood, Churchill County
Chuck Pulsipher, Clark County
Robert Conner, Douglas County
Sheri Eklund-Brown, Elko County
Nancy Boland, Esmeralda County
Michael Mears, Eureka County
Varlin Higbee, Lincoln County
Glenn Bunch, Mineral County
Roger Mancebo, Pershing County-Chair
Robert Kershaw, Storey County
Bill Whitney, Washoe County-Vice Chair

Members Absent

Mickey Yarbrow, Lander County
Don Tibbals, Lyon County
Humboldt County (vacant)
Nye County (vacant)
White Pine County (vacant)

Others Present

Allen Biaggi, Director, Nevada Department of Conservation and Natural Resources
Pamela Wilcox, Nevada Division of State Lands
Jim Lawrence, Nevada Division of State Lands
Skip Canfield, AICP, Nevada Division of State Lands (State Land Use Planning Agency)
Gary Longaker, Nevada Rural Housing Authority
Lynn Gondorcin, Nevada Rural Housing Authority

CALL TO ORDER

Chairperson Mancebo called the meeting to order at 8:35 am.

Self-introductions were made by all audience and council members present.

Prior to approving the draft minutes for the March 17, 2006 SLUPAC meeting, **Chair Mancebo** asked if there were any proposed changes or comments. **Sheri Eklund-Brown** and **Bill**

Whitney noted some grammatical errors. **Bill Whitney** moved to approve the minutes with the noted edits and **Pete Livermore** seconded the motion. All approved the motion.

AGENCY REPORT

Pamela Wilcox, Administrator of the Nevada Division of State Lands, welcomed members to Minden. **Ms. Wilcox** stated that SLUPAC is a very important group that helps the agency keep in touch with statewide County issues and thanked the members for traveling, some a very long way, to the meeting.

Skip Canfield, AICP proceeded with a summary of activities of the State Lands Use Planning Agency, a section of the Nevada Division of State Lands:

State Land Use Planning Agency
Project Status
October 20, 2006

I. Board or commission activities

- State Board on Geographic Names, hosted the meeting at Bryan Building on Tuesday September 12.
- Membership and participation on the BLM Mojave Southern Great Basin RAC

II. Significant events/public contact/ Matters with the Governor's Office, other State agencies or local governments

- Facilitated the Eureka Planning Commission's workshop on regional growth management tools on Thursday September 28.
- Attendance/participation at monthly NDOT US50 Corridor Study Committee.
- Hosted a State Capitol Complex walking tour for participants of the Nevada Chapter American Planning Association Conference, Pam Wilcox also made a presentation on the master plan, held on Thursday September 7.
- Facilitated the White Pine County Conservation, Recreation and Development Act of 2006 State Agency briefing held on Wednesday September 20.
- US 50 Corridor Regional Planning Study (member of stakeholder group-presentation) – coordination with NDOT, and Carson City/Lyon/Churchill counties
- Beatty Master Plan update in concert with potential Question 1 application.
- Caliente Master Plan update, coordinated with planning commission.
- Amargosa Valley Master Plan update, coordinated with town board.
- White Pine County Public Land Policy Plan update
- Elko County Public Land Policy Plan update
- Eureka/UNLV joint master plan update
- Lincoln County master plan update, coordinated with land act requirements.

III. Matters with the Congressional Delegation

- Close coordination with Delegation staff on the pending White Pine County Conservation, Recreation and Development Act of 2006. State agency briefing held for September 20.
- Pending land bill process – Esmeralda, Lyon, Carson City, Washoe, Pershing, Humboldt, Nye and White Pine Counties, (Note: Pershing bill no longer viable at this time.)
- Ongoing joint presentations (SLUPA and Kevin Kirkeby, Senator Ensign's office regarding public lands policies and land bills). Most recent meeting with Humboldt County Commissioners at Paradise Valley.

IV. Other items of interest

- Continued direct interaction with State Clearinghouse on a multitude of regional land use, public lands and natural resources issues.
- Interviewed Land Use Planner candidates, reviewing backup info for decision as soon as possible..

Allen Biaggi, Director, Nevada Department of Conservation and Natural Resources (DCNR), welcomed the members to Minden and thanked them for their participation on SLUPAC. **Mr. Biaggi** stated that this is an exciting time for DCNR and the State. Notably, there will be a transition to a new governor and a number of new legislators. Also, DCNR has been formulating the budget (flat line) for the new biennium. He has asked all of the administrators to pursue a low key legislative agenda and only propose budget items that are absolutely critical to day-to-day operations. The only request specific to the Nevada Division of State Lands (NDSL) is the Tahoe Bond request, which is an ongoing program. Most other bill requests are from the Nevada Division of Environmental Protection (NDEP) relating to air and water pollution issues. However, the session will keep DCNR very busy addressing emerging issues including eminent domain.

Sheri Eklund-Brown asked about comments from the Central Nevada Regional Water Authority (seven-county coalition) and the Legislative Committee on Public Lands regarding the need for an increase in budget for the Nevada Division of Water Resources (NDWR) to do statewide studies and to have more data available to the public for planning. **Mr. Biaggi** responded that DCNR is submitting a budget enhancement request but the outcome of that request is uncertain. The enhancement would fund new positions, including start-up money for the new water planner position. (During the last Legislative session, water planning was reinstituted, but not funded.) Also, one half million dollars per year of the biennium is being requested to fund water studies such as perennial yield surveys.

Mr. Biaggi is very excited about continuing the Question 1 Program and mentioned that DCNR is getting very close to the deadline for getting all of the bonds sold and NDSL is working very hard to identify projects and get the money out on the ground.

Mr. Biaggi stated that the State Water Engineer had recently concluded two weeks of hearings on the Southern Nevada Water Authority (SNWA) request for importation of groundwater from Lincoln and White Pine Counties. A decision is anticipated before the end of the year.

Mr. Biaggi also stressed the critical situation facing all of Nevada regarding fire. Northern Nevada was hit hard this year, but the Mojave Desert of Southern Nevada has also experienced historic fires. There were over 1000 fire starts this season resulting in the burning of 1.3 million acres and a cost to the State of over \$10 million in fire suppression. He announced the formation of a coalition whose highest priority is to get landscape-level actions that are focused on pre suppression to break us from the fire cycle that we are in.

Sheri Eklund-Brown stated that over 1 million acres burned in Elko County. Congress is looking at a farmer/rancher aid package to address the owners and lessees of lands that were burned across the nation (9 million acres). However, to conduct prescribed burns, do greenstripping projects, or other measures, groups like Western Watersheds are slowing down the process due to lawsuits and injunctions. She asked how the coalition can do any proactive landscape-level work while other groups put up stumbling blocks. **Mr. Biaggi** said that this is a challenge because some groups are philosophically opposed to these measures, but we must all work together to reduce resource damage.

BALLOT QUESTION 2 – PROPERTY OWNERS BILL OF RIGHTS

Madelyn Shipman presented issues surrounding a ballot initiative on November's ballot regarding eminent domain. She discussed the following topics:

NEVADA PROPERTY OWNERS' BILL OF RIGHTS

1. [formerly 2] Public use shall not include the direct or indirect transfer of any interest in property taken in an eminent domain proceeding from one private party to another private party. In all eminent domain actions, the government shall have the burden to prove public use.

While it is clear that this provision is directed to the Kelo vs. City of New London U.S. Supreme Court opinion, it is too broad. The Kelo case involved redevelopment and Connecticut law regarding same. The essence of redevelopment is to provide a means to government to clear blighted (as defined by state statute) areas of a city and restore economic vitality through new or expanded development to the area. The condemnation of property and transfer to private persons can only occur within the context of redevelopment. Unfortunately, this initiative provision, as written, applies to condemnation of all property – including , for instance, property needed for utility easements, shared driveway accesses and even railroad right-of-way.

2. [formerly 4] In all eminent domain actions, prior to the government's occupancy, a property owner shall be given copies of all appraisals by the government and shall be entitled, at the property owner's election, to a separate and distinct determination by a district court jury, as to whether the taking is actually for a public use.

This provision actually covers two subjects: it establishes a right of the property owner to have a copy of any and all appraisals done by the public agency of their property at the time obtained;

and, it provides for a jury determination as to the issue of whether the property is needed for a public use.

Current law requires that the plaintiff (assume governmental agency), if seeking immediate occupancy of the property, deposit "...a sum equal to the value of the premises plus damages, as appraised by the plaintiff." NRS 37.100.

The issue of providing a copy of the actual appraisal to a property owner prior to condemnation being initiated was before the 2005 Legislature and – for all of the complex reasoning provided at the many hearings – was not put into law. Current practice is to provide an executive summary of the appraisal for pre-filing discussions and to exchange appraisals during discovery after the action is filed. This practice is to assure (1) that any appraisal is updated to the date of the filing of the action as the law establishes the filing date as the valuation date; and (2) that any appraisal obtained by the property owner is independent. This is even more important given the passage of AB 341 in 2005 which authorizes anyone –non-licensed as well as licensed appraisers – to testify in an eminent domain proceeding without regard to national standards for appraisal practice.

As for a jury trial on the issue of public use, the provision changes current law which makes such a determination a question of law for the court to decide. Current law also provides that if a property owner takes out the money deposited with the court, he/she waives the right to challenge whether or not the property is being taken for a public use. NRS 37.170. The 2005 Legislature debated prohibiting public agencies exercising eminent domain from declaring "open space" and "the protection of wildlife habitat" as public uses – ultimately, instead, creating severe condition precedents to the condemnation by a public agency for such uses. AB 143.

3. [formerly 5] If a public use is determined, the taken or damaged property shall be valued at its highest and best use without considering any future dedication requirements imposed by the government. If private property is taken for any proprietary governmental purpose, then the property shall be valued at the use to which the government intends to put the property, if such use results in a higher value for the land taken.

The sponsor(s) of this constitutional provision obviously had something specific in mind. The definition of how fair market value/just compensation is determined was debated by the Legislature in 1993. Currently, property is appraised in accordance with national appraisal standards by professional and trained appraisers. A common definition of just compensation is "the most probable price" assuming a cash sale and a willing buyer and seller. This makes sense – whereas the highest price may sometimes be the most probable price, it also may not be the most probable price.

The value of property, or just compensation, is determined by professional appraisers in accordance with a host of specific and complex standards – with future dedication requirements being only one. The isolating out of this one factor will create a result not consistent with fair market value or just compensation.

Current law (NRS 37.112) provides that the use intended by the condemner for the land is to be disregarded in determining value – either up or down – as the intended future use is really

irrelevant to current use. A proprietary use of property by government is one that functions similar to private enterprise – such as a parking garage or golf course. This provision would result in the valuing of land – not based on current value (fair market value) but, instead, on future speculative value

4. [formerly 6] In all eminent domain actions, just compensation shall be defined as that sum of money necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compound interest and all reasonable costs and expenses actually incurred.

This provision actually addresses two issues: first, it defines just compensation as excluding governmental offsets; second, it requires payment of compound interest and "reasonable costs and expenses actually incurred".

The provision essentially defines just compensation – as used in the U.S. and Nevada Constitution – to mean more than fair market value. If read in combination with paragraph 7, just compensation means the highest price the property would bring on the open market plus the value of any governmental offsets, compound interest, reasonable costs and expenses, including attorneys fees, actually incurred. Numerous efforts were made in the 90's to define just compensation and it was decided by the Legislature to leave the definition to the appraisers consistent with national appraisal standards.

The issue of compound interest was before the 2005 Legislature – and did not pass out of committee. The reasons were stated on the record, but primarily revolved around the fact that many times compound interest exceeds the return over time of a prudent investor. Current law provides for simple interest at prime plus two percent per year. The issue gets more complex when discussed in terms of inverse condemnation actions – given Nevada's fifteen year statute of limitations for such actions.

Just compensation is also being defined by this provision to include – in addition to fair market value of the property – amounts as determined solely by the property owner and his/her attorney. Under this provision, "expenses actually incurred" could include attorney fees based on a contingent fee agreement – often up to 50% of the difference between the appraised value as deposited in court and the value as determined by a jury. It would also guarantee all costs – whether or not the costs incurred were appropriate or necessary.

Finally, this provision would eliminate offers of judgment – a practice encouraged by court rule to get the parties to settle without the cost and expense of trial. Offers of judgment are utilized in all civil actions – not just condemnation. Essentially, what it means is that the government will be responsible for attorney's fees of the property owner even if the property owner proceeds to trial and gets a judgment less than what was offered. It will encourage, if not ensure, that all condemnations actions will go to trial.

5. [formerly 7] In all eminent domain actions where fair market value is applied, it shall be defined as the highest price the property would bring on the open market.

This provision implies that fair market value isn't applied when, in fact, it is. The above is a fair description of fair market value but too simplistic since it leaves out other factors required to be considered and applicable to value, such as terms and financing. All applicable factors are taken into account by national appraisal standards and, as stated with regard to provision 3, the "most probable price" may or may not be the highest price.

6. [formerly 11] Property taken in eminent domain shall automatically revert back to the original property owner upon repayment of the original purchase price, if the property is not used within five years for the original purpose stated by the government. The five years shall begin running from the date of the entry of the final order of condemnation.

This provision speaks for itself. It creates, however, some ambiguities. Who decides what the original purpose was – if there are minor changes? Who decides whether the property is being used in furtherance of the original intent? What happens if the government entity still intends to use the property as proposed but can't because of lack of funding? Why should a property owner be able to buy the property back at the same price for which it was purchased – while in the meantime benefiting through investment, presumably, of the money paid for the property. At minimum, the property owner should have to pay the governmental entity the purchase price plus interest at the rate paid by the governmental entity (prime plus 2%). The intent of the broader public would be better served if the automatic reversion were changed to a right of reversion, if the reversion were conditioned upon the government bearing the burden to prove continuing need and if the value paid was fair market value or at least included interest on the original purchase price.

7. [formerly 12] A property owner shall not be liable to the government for attorney fees or costs in any eminent domain action.

This initiative provision was the subject of failed legislation in 2005. It, in effect, takes away the incentives for settlement intended by offers of judgment. Offers of judgment assist in settling cases because it requires the attorney/party to whom the offer is made to realistically value his/her case before trial. The provision will also segregate eminent domain actions from all other civil actions in which offers of judgment are utilized in accordance with court rule and statute. This provision is not appropriate as a constitutional provision.

8. [formerly 13] For all provisions contained in this section, government shall be defined as the State of Nevada, its political subdivisions, agencies, any public or private agent acting on their behalf, and any public or private entity that has the power of eminent domain.

This provision speaks for itself; however, what is meant by "private agent"? If it means railroads, utility companies, mining, etc. and other non-public entities currently authorized by statute to exercise eminent domain, the provision adds little. If it is intended to mean something more than that, the intention is unclear.

9. [formerly 14] Any provision contained in this section shall be deemed a separate and freestanding right and shall remain in full force and effect should any other provision contained in this section be stricken for any reason.

This provision is standard language on severability – essentially saying that if one provision is found to be unconstitutional for any reason, the remaining provisions stand. It is one of the reasons given by the Nevada Supreme Court for letting the Initiative go forward after removing several provisions.

Nancy Boland commented on the possibility of the new route of the proposed Yucca Mountain rail line running through the town of Silver Peak and taking private property. **Ms. Shipman** responded that the rail line is subject to federal law, not state law. For local impacts, the Uniform Assistance and Relocation Act applies.

Chuck Pulsipher stated that Clark County is concerned that passage of the bill will be financially devastating and the voters need to be educated. Specifically, the proposed separate trial requirement (#2 above) would result in no economic disincentive for a private individual to not pursue a court case. #5 is an outrageous appraisal requirement that would result in an unrealistic outlay of county funds.

Bill Whitney expressed concern that in two years there could be a new ballot initiative that could expand the current one's impacts further and planners should be proactive to avert a potential Oregon Measure 37 action here in Nevada.

At 10:00 am, the Chairman called a 10-minute break.
The meeting resumed at 10:10 am.

SLUPAC'S ROLE IN THE LEGISLATIVE SESSION PROCESS

Pam Wilcox gave a brief description of NDSL's role during the Legislative session. NDSL routinely tracks all proposed legislation (a broad spectrum of bills) that will have an impact on the agency including every bill that has a connection to land use planning. Typically NDSL does not provide an opinion one way or the other on the bills. At the end of the session, a report is generated and presented to SLUPAC. **Ms. Wilcox** asked the Council members if they would like to have increased interaction with NDSL regarding bill tracking. **Jim Lawrence** added that NDSL is interested in hearing if the members would like to have their SLUPAC opinions relayed to the Governor's office. He said a proper role of the State Land Use Planning Agency (SLUPA) could include the provision of information to SLUPAC so that the members can make informed comments on how they think a proposal may affect county-level matters.

Roger Mancebo stated that e-mail alerts would be most beneficial.

Sheri Eklund-Brown stated that coordination between SLUPA and SLUPAC is important and **Nancy Boland** agreed. **Bill Whitney** added that Washoe County has a staff analyst for legislative proposals. However, he would like feedback from other counties as well.

Pam Wilcox repeated the fact that NDSL tracks bills. A mechanism for presenting SLUPAC opinions will need to be explored. **Sheri Eklund-Brown** asked if it could be as simple as forwarding the SLUPAC opinion to the Governor's office. **Robert Conner** added that it is beneficial to have information forwarded through the planning department and planning commission. **Pete**

Livermore mentioned that the Legislative Counsel Bureau is a good resource. He asked if the SLUPA could categorize bills in a State perspective for review by SLUPAC and **Ms. Wilcox** agreed. **Roger Mancebo** asked that an e-mail contact list be generated for bill tracking and dialogue. **Bill Whitney** said it would be beneficial for the counties to hear SLUPA opinions on proposed bills. **Ms. Wilcox** reiterated that NDSL/SLUPA typically does not provide opinions, but would be happy to provide an analysis. **Jim Lawrence** added that a bill tracking summary could be e-mailed to the group every week during the session to keep everyone apprised of emerging issues.

MOTION: Sheri Eklund-Brown moved to approve a SLUPAC/State Land Use Planning Agency dialogue and analysis process for proposed legislative bills that includes an e-mail contact list and bill tracking updates. Nancy Boland seconded the motion and all voted in favor.

At 10:30 am, the Chairman asked if there was any public comment from members of the audience.

PUBLIC COMMENT

Gary Longaker, Nevada Rural Housing Authority (NRHA), gave an overview and status on NRHA's activities:

History

Nevada Rural Housing Authority was established as a state government agency in 1972. In 1995 NRHA became a private entity that is governed by a Board of Commissioners appointed by the Nevada League of Cities and the Nevada Association of Counties. New legislation, AB 372 passed in 2005, clarified NRHA's jurisdiction and ability to provide affordable housing services throughout the rural parts of the state, and be more responsive to the needs of rural Nevada. NRHA is currently the only private statewide housing agency in Nevada. The legislation can be found directly at <http://leg.state.nv.us/73rd/reports/history.cfm?ID=1990> or via the legislative web site at <http://leg.state.nv.us>.

Nevada Rural Housing Authority administers the following programs:

- ♦Section 8 Rental Assistance (1973) - NRHA is the primary provider of rental assistance in the 15 Nevada rural counties. The agency currently administers over 1,500 HUD Section 8 rental assistance vouchers to low-income families, the elderly and the disabled.*
- ♦Housing Assistance Program (HAP)(1978) - NRHA administers project based rental assistance for 130 rental units through HUD HAP contracts.*
- ♦Rural Development Rental Assistance (1979) - NRHA administers project based RD rental assistance for 122 units in 5 rural apartment complexes.*
- ♦Tenant Based Rental Assistance (TBRA)(1999) - TBRA has assisted over 200 elderly or disabled rural households since its inception.*
- ♦HUD Housing Service Coordinator Program (2005) - NRHA provides supportive services for the residents of Southgate Apartments, a subsidized Senior complex.*
- ♦Security Deposit Program (2005) - In Lyon, Carson City, Churchill, and Douglas Counties, NRHA assists low-income families by assisting renters with security deposits.*

♦ Housing Quality Inspection (HQS)- NRHA provides HQS inspections for all 1,500 Section 8 units, own 7 apartment complexes, and has contracts with the Reno Housing Authority and Nevada Mental Health to provide required HQS inspections.

♦ NRHA has developed and owns over 250 units in six housing developments located in Carson City, Yerington, Fallon and Winnemucca.

♦ Single-Family Tax-Exempt Bond Program February 9, 2006, NRHA successfully issues \$10 million in single-family tax-exempt bonds for first time homebuyers with a 5.95% mortgage and 4 points of down payment assistance in the form of a grant.

♦ Financial Literacy Program (2006) provides individual financial counseling, credit repair, and homebuyer education.

♦ Section 8 Housing Choice Voucher Homeownership (2006)- A program that helps families receiving Section 8 rental assistance become first-time homeowners.

♦ Rural Housing Needs Assessment -In response to growing housing need across the fifteen rural counties, the Nevada Rural Housing Authority (NRHA) commissioned a report in June 2004. Completed in March of 2005 the needs assessment provides up-to-date information on the changing demographics, housing trends, and service gaps across the state. The Rural Housing Needs Assessment can be found on the NRHA Website: www.nvrural.org.

Emerging Directions

In 2003, the NRHA Board of Commissioners made a **commitment to expand** the agency's programs and services in order to better serve citizens throughout the state. The Board appointed a **new management team** and gave staff a broad charge to stabilize existing operations, explore new programs areas, and diversify the agency's revenue base.

NRHA, after completing a **strategic planning process**, will develop a business plan that will chart the course of the agency for the next decade. Through the strategic planning process the Authority has developed the attached mission statement, vision statements, and set of core values.

As a quasi-governmental agency, NRHA receives no allocation of funds through the State budgeting process. NRHA has stabilized financial operations across the agency and has received an "unqualified" opinion and no findings on its last three independent audits.

In the last three years, NRHA has made extraordinary progress, increasing utilization of its **Section 8 Housing Choice Voucher** program to over 1,500 participants and has been designated as a **high performer**. To enhance the Authority's ability to serve those who need rental assistance, NRHA secured funding through the HOME and Low Income Housing Trust Fund (LIHTF) programs to create **Tenant Based Rental Assistance**.

Many households are unable to secure rental housing because they are unable to save enough funds for the needed security deposit. In response to this need, NRHA has also developed a program to provide **Security Deposit** funds for qualified households through an NRHA revolving loan fund.

In an effort to bring new funding sources and improve services has resulted in NRHA secured a HUD grant that funds a **Multi-Family Housing Coordinator**. The Coordinator develops resources and provides services that will facilitate a senior citizen's ability to age in place. In the future, NRHA

*plans to provide these types of services throughout its rental properties. In addition HOME, LIHTF, Sierra Pacific Power, and the Federal Home Loan Bank have provided weatherization and **property improvement** funds to preserve the quality of the rental properties owned by NRHA.*

*NRHA has created a mortgage product for a **First Time Homebuyer's Program** through the sale of Tax Exempt Bonds and in the future will partner with communities by pooling their private activity bond cap allocation for future programs which will provide 30 year mortgages at below market rates with down payment assistance for first time Homebuyers.*

*A HUD **Section 8 Home Ownership Program**, for families having a Section 8 Housing Choice Voucher, was implemented July 1, 2006. This program assists renters receiving rental subsidy to utilize the subsidy toward mortgage payments for their first home purchase.*

*NRHA has created **Nevada Rural Housing, Inc.**, a nonprofit 501(C)3 organization, to enhance the development activities of NRHA. This organization will be able to build new housing units, both multifamily and single family homes.*

*A **Financial Literacy Program** has been developed that will provide a wide range of classes and learning opportunities such as Pre and Post Home Ownership counseling, reverse mortgages, family financial counseling, financial education to our youth, and other financial issues such as predatory lending.*

*NRHA is looking forward to **working with local governments** in developing comprehensive strategies to ensure that a wide variety of housing choices become available to citizens in rural Nevada.*

At 10:40am, the Chairman asked for County reports.

COUNTY PLANNING ISSUES

Eleanor Lockwood, Churchill County:

- In 2007, the first County water and sewer system will be up and running. The second phase is in the design stage.
- There has been a building market downturn.
- Water allocation concerns – upstream Carson and Truckee Rivers.
- County is acquiring water rights and requiring all new development to dedicate water rights.
- Agriculture is important to the County, steps are being taken to retain surface water rights for agriculture and open space. A transfer of development rights (TDR) program is in place to move development to identified urban growth areas, and away from identified agriculture and open space areas.
- The County has partnered with NAS Fallon to develop conservation easements and TDR purchases around the base.
- Dust control ordinance development to encourage property owners and developers to abstain from clearing areas prematurely.

Bill Whitney, Washoe County:

- A multi-year master plan and area plan (13) update is underway.
- The 2007 Truckee Meadows Regional Plan update is underway.
- Three Truckee River locations east of Sparks have been acquired through SNPLMA and State funds for river restoration, flood control, water quality and fisheries.
- The Washoe County lands bill process is on hold as the County updates the Open Space Plan with the addition of a natural resources element.

Michael Mears, Eureka County:

- Michael Mears is the new County Assessor.
- The State Land Use Planning Agency (**Skip Canfield, AICP**), has held growth management discussions with the County.
- Mount Hope Molybdenum Mine proposal in Diamond Valley is a catalyst for growth management/housing discussion. Will include potential for 500 construction employees for a 2-3 year period. 300 permanent employees over 50-year life of mine.
- Friction between agricultural and residential uses in Diamond Valley.
- Townsite Annexation Committee – Developing infrastructure plan to determine absorption potential of new housing and other growth within Town of Eureka.

Sheri Eklund-Brown, Elko County:

- Railport development.
- Transloading industrial park out to bid soon with Union Pacific and State as partners.
- Update to the Public Lands Policy plan underway with **Skip Canfield, AICP** from the State Land Use Planning Agency.
- Extreme fire season.
- Scrutiny of the SNWA water importation EIS process.
- California Trail Interpretive Center broke ground, \$15-20 million project, target is increased tourism.
- Wilderness proposal for Elko County land included in White Pine land bill was opposed by Elko County, bill went to D.C. without those lands included.
- Working with US Forest Service on route designation and travel management planning.
- Socioeconomic study for grazing and recreation with Tom Harris (UNR) available.
- Elko County supports proposal by New Mexico Senator Pearce (HR 6298) that addresses RS 2477 right-of-ways and public access.

REGIONAL PLANNING SUCCESSES OF THE CARSON WATER SUBCONSERVANCY DISTRICT

Ed James, General Manager of the CWSD, presented a history and planning successes of the CWSD:

CWSD History

1959 *CWSD Established by the Court*

Purpose: Negotiate payback of debt on the Watasheamu Dam between the ranchers and Federal Government

- 1980's** Fed. Gov't abandoned the Dam
- 1989** State changed the role of CWSD
- 1997** Flood Event
- 1998** Carson River Conference
 - Integrated Watershed Planning
- **1999** Douglas and Lyon Counties joined
- **1999** Carson City became a member
- **1999** Churchill County became a member
- **2001** Alpine County became a member

Structure of CWSD

- 13 Board Members
- 5 Counties
- 2 States (CA & NV)
- Funding (2006/07 Budget \$1.55M)
 - Property Tax (\$0.03/\$100)
 - Grants (State, Fed., & others)

Carson River Watershed

- Encompasses approx. 3,966 square miles
- Carson River 184 miles long
- Current population estimation 125,000
- Predicted to reach over 457,000 by 2050

Current Water Situation

- River is fully appropriated
 - 95 %+ of the river water is used for Ag
- Groundwater basins over appropriated
- Balancing water needs between Ag, environmental & domestic use
- No large upstream storage
- Water quality problems
- Growth

Current CWSD Programs

- 208 Planning Agency for Carson River Basin
- Community Outreach and Education
- Our Lifeline in the Desert Watershed Map & Website
- AB 380 Water Buy-out Program
- River Restoration
- Noxious Weed Abatement

- *Watershed Management Plan*
- *Water Quality Studies*
- *Wastewater Issues*
- *Regional Floodplain Management Plan*
- *Habitat Enhancement*
- *Regional Water System*

Regional Water System

What it is not!

- *Promoting Growth*
 - *Use existing counties master plans*
 - *Evaluate alternatives*
- *One Large Water Purveyor*
 - *Regional Support with local control*

- ***What the Regional Water System is, is a planning tool to evaluate alternatives .***

Goals of the Regional Water System

- *Enhance Water Supply Reliability*
- *Enhance Fire Flow Protection for Communities Connected to the System*
- *Help in Meeting New Federal Water Quality Objectives*
- *Benefits the Environment*
- *Provided Lower Overall Costs to Communities*
- *Protect Agriculture*

REGIONAL WATER WORKSHOPS

PURPOSE

- *Hear from Water Purveyors, Decision Makers, and Other Regarding Needs/Issues and Threats (NIT) Concerning water resources in their area.*

GOALS

- *Hear from participants regarding their NIT*
- *Discuss the NIT with the group*
- *Discuss what program should be pursued*
- *Promote communication among the entities*
- *Discuss how can CWSD help address the NIT*

COMMON ISSUES

- *Need Education Programs*
- *Programs in the schools*
- *General public awareness programs*
 - *Promote Water Conservation Programs*
 - *Develop Better Communication Between Water Purveyors and Community*
 - *Enhance Treatment and Use of Reclaimed H2O*
 - *Collect More Water Quality and Quantity Data*
- *What are the real numbers?*
 - *Preserve Agriculture*

- Preserve Open Space*
- Protect Wildlife*
- Interconnect Water Systems*
- Protect the Flood Plains*
- Keeping the Water Resources in their Counties*
- Growth Management*
- Climate Change*

SUMMARY

•ROLE OF CWSD

- Work with various water right owners and agencies to develop a watershed vision.*
- Limited Surface & GW Resources*
- Evaluate all the resources i.e. Surface, GW, & Reclaimed Water*
- Balancing Water Demands*
- Climate Changes*

Question/Comments for Ed James:

Pete Livermore said that water planning is important.

Ed James said that an ongoing problem is the fact that the State does not recognize the interaction between surface and groundwater. As more water is pumped or transferred, and as more wells go in to an aquifer, it becomes more and more difficult to understand whether you are pumping groundwater, surface water or a combination.

Sheri Eklund-Brown asked how the CWSD is involved with the proposed "Northern Water Authority". **Mr. James** replied that the concern is the Southern Nevada Water Authority example does not work in the north because of the number of major water purveyors. Every watershed is unique and it should be run locally.

Eleanor Lockwood stated that there is a lack of data and multiple conflicting data. How can the CWSD provide data that is recognized as the true data that can be used for watershed management that everyone refers to? Also, the State Engineers Office needs to look at the reality of the systems, not just the law. **Ed James** responded that there is a critical lack of data. Churchill County is only now doing their first pumping inventory. CWSD has been assisting the State in doing pumping inventories over the last five years. Without a pumping inventory, the amount of water being used is unknown.

The Chairman called a lunch break at 11:45 am and the meeting resumed at 1:10 pm.

Juan Guzman replaced **Pete Livermore** in representing Carson City and **Robert Kershaw** arrived representing Storey County.

PLANNING THE FUTURE OF NEVADA'S SCHOOL TRUST LANDS

Pam Wilcox presented a history of Nevada's school trust lands:

SLUPAC's statutory authority rests with land use planning, and the State Land Use Planning Agency section of the Nevada Division of State Lands is staff to SLUPAC. However, a much larger section of the Division (the State Land Office), and the oldest section of the Division, is charged with managing State lands. The State Land Office has been in existence since statehood. There are a variety of State lands, and the oldest block of lands are the school trust lands.

History of Federal school land grants:

- Northwest Ordinance of 1785 – Set aside land for the support of the common schools.
- Starting with the admission of Ohio in 1803, each new state was granted school trust lands.
- Until 1850, one section (Section 16) was granted in every township.
- Starting in 1850, two sections (16,36) were granted.
- When Nevada became a state in 1864, our grant of sections 16 and 26 came to about 4 million acres.

What are school trust lands?

- Granted to each state at statehood for the support of the common schools (K-12)
- Held in trust and managed to produce revenues for the permanent school trust fund.
- The State has a trustee's fiduciary duty to the trust beneficiaries.

Nevada State Constitution:

- All lands granted by Congress to this state for educational purposes...and the proceeds derived from those sources...are hereby pledged for educational purposes and the money there from must not be transferred to other funds for other uses. (Article 11, Section 3)

Nevada's School Trust Lands:

- Nevada is unique.
- Of the 4 million acres received, almost all of Nevada's school trust lands are gone.
- Nevada has less school trust lands now (+/-2,500 acres) than any other state.
- Although Nevada was granted sections 16 and 36 in every township, these lands could not be taken until they were surveyed, and surveys took a long time.
- Most of the land was arid, remote, inaccessible, and not the kind of land that settlers were looking for in the 1800's.
- By 1879, after 15 years, only about 60,000 acres were sold.

Exchange Act of 1880:

- Congress granted Nevada permission to give up its land grant of sections 16 and 36 (4 million acres) in exchange for 2 million acres in a "State Selection Grant". Nevada was the only state afforded this type of grant.
- Lands were selected where demanded by settlers.
- Lands sold for \$1.25 or \$2.50 an acre, depending on location.
- Almost all of the 2 million acres was sold by 1899.

Exchange Act of 1926:

- Congress granted Nevada permission to exchange the remaining 30,000 acres of “practically worthless” school grant land for another state selection grant.
- These lands have now all been disposed of.

School Trust Lands Today:

- Today Nevada has approximately 2,500 acres of school trust lands.
- The Nevada Division of State Lands manages these lands to generate revenues for the trust.
- In some cases, revenues may be generated by leases, easements, or other authorizations.
- In most cases, the best return to the trust can be realized by sale of the lands at the appropriate time.
- The Division requests the cooperation of local governments as the lands are managed.
- School trust lands should be treated the same as privately-owned lands.
- School trust lands should be designated in master plans for appropriate development, and zoned as if they were owned by a private landowner.
- Local governments should expect that trust lands located in or near communities will probably be sold for commercial, residential or other appropriate uses.

Glenn Bunch asked about a 1-block site northeast of the rodeo grounds in Hawthorne that has been labeled as “school trust lands” by the County. The map handout provided by **Pam Wilcox** does not show the site as school trust lands. **Pam Wilcox** stated that the agency would look into the ownership of the site.

Juan Guzman asked if there are special funds for the management of school trust lands. **Pam Wilcox** responded, no, only funds from the regular budget.

Pam Wilcox mentioned that the other State Lands managed by the Nevada Division of State Lands include Sovereign lands (beds of navigable rivers), Lake Tahoe sensitive lands, and Acquired lands (excluding NDOT, the University System, and the Legislature).

PLANNING FOR THE DISPOSALS

Skip Canfield, AICP requested an informal discussion with the members regarding planning for lands that are disposed of as county by county land bills progress in Nevada. There is a need for counties to proactively address potential areas that currently are federally managed, but could be disposed of in the future. Proactive measures include the update of each county’s Public Land Policy Plan and the Master Plan. It is most important to designate public lands with a land use designation as if those lands were privately owned. It is also important to develop a vision and policies to direct growth and conservation of lands in the proper direction. Then, when BLM employs the joint selection process with the county to identify lands for disposal, the county can defend their decision for which lands should be disposed of.

Varlin Higbee stated that Lincoln County has no tax base to fund services and disposals are one way to generate taxes.

Nancy Boland said the BLM RMP disposal list is not always realistic. Also, there is no funding available to counties under SNPLMA or from the BLM to update the RMPs.

Bill Whitney stated that public lands should be planned as if they were private to be proactive. In Washoe County, most public lands are designated as Open Space in the County Open Space Plan. However, he expressed concern that land bills can derail the entire process.

Skip Canfield, AICP stressed the importance of designating all public lands, regardless of pending land bills. In designating public lands with desired land uses (full spectrum from development to preservation), it sends a strong message to BLM (which follows FLPMA requirements for consultation), as to what the jurisdictions vision is for those lands, and also that the jurisdiction followed an open, public, transparent process.

Juan Guzman mentioned that the land bill process can have surprises and used the Carson City land bill (pending) as an example. The focus of the bill is to consolidate BLM, US Forest Service and Carson City lands into a pattern that represents better management by the three entities. However, most of the public focused on one small controversial aspect of the bill, a proposed shooting range near residential uses.

Sheri Eklund-Brown expressed concern that wilderness groups lobby Congress for additional areas that the county is not aware of.

Chuck Pulsipher stated that the Carson City example is fascinating (direct transfer of BLM/USFS lands to Carson City). In Las Vegas, the county cannot afford the lands because of speculation. However, local governments get first option on lands through the Recreation and Public Purposes (R&PP) process. A direct transfer would streamline the process.

Pam Wilcox mentioned that the R&PP option was left out of the Lincoln County Conservation, Recreation and Development Act of 2004 (State argued for its inclusion). Currently, it is not included in the draft White Pine County bill and the State is arguing for inclusion, to benefit the county. This is an important public planning tool for all bills. If implemented, then the county can afford the cost of the infrastructure without being saddled with the cost of the land.

Varlin Higbee asked about the affordable housing aspect of the SNPLMA process and how those lands are held in reserve. **Pam Wilcox** responded that BLM holds any lands identified by the county as suitable for affordable housing. Those lands are not disposed of until the county is ready, and when they are disposed, they are sold at discount to a qualifying jurisdiction.

COUNTY PLANNING ISSUES (Continued)

Varlin Higbee, Lincoln County

- The Clark side of the Coyote Springs development is ongoing. The Lincoln side is awaiting completion of the habitat conservation plan, while the golf course is being developed.
- The master plan is being updated with addition of PUD policies.
- A process is underway to identify and plan for potential land disposals.
- Trail system plan being developed to connect to the National trail system.

Nancy Boland, Esmeralda County

- Money is available from Yucca Mountain funds to help develop a GIS mapping system.
- A parcel map workshop is scheduled to develop standards, and to address serial parcel map problems.
- Solid Waste Plan revised.
- Mina rail corridor concerns, could take private land in Silver Peak. It is hard to plan with such uncertainty.
- Monte Cristo State Park proposal.

Robert Conner, Douglas County

- 10-year Master Plan update underway, to the Planning Commission and County Commission before 2007.
- Transportation Plan update, emphasis on US 395 Study.
- Water Study underway, emphasis on water availability.
- Minden/Gardnerville Plan for Posterity, integration into Master Plan, Design Manual.
- Alternative Energy ordinance.
- Open Space/TDR Program.
- Purchase of Development Rights program.
- SNPLMA conservation easement acquisition in Carson Valley – 308 acres, success.
- Regional planning efforts between Douglas, Carson and Lyon Counties.

Chuck Pulsipher, Clark County

- Streamlining the county regulatory process.
- Impact fee study.
- Continue updating area land use plans, eight of the eleven have been updated.
- Water conservation effort, turf buy back program, \$1 per square foot, density increase incentives if landscaping reduced.

Glenn Bunch, Mineral

- The base is slowly recovering from the BRAC process.
- Master Plan is being updated.
- Water quality standards are being reviewed, one well in Hawthorne is high in uranium.
- Old townsite of Babbitt purchased for an industrial park, 600 potential jobs, sewer development grant.
- Borealis Gold Mine expansion.
- Rawhide Mine – use pit for waste management.
- Special operations expansion at base to train National Guard.
- New proposed subdivision at Walker Lake – 96 parcels.
- Working with base to protect historic access to Mt. Grant. Base wants to close due to security concerns.

Juan Guzman, Carson City

- Land bill process ongoing, community workshops being held.
- Lompa Ranch potential in near future for master planned development.
- Potential for new city recreation center.
- Freeway development continues, Phase 2 soon.
- Effluent reservoir above the Carson River is leaking, mitigation plans being developed.
- \$390,000 open space grant for fire rehabilitation.
- Question 1 conservation easement on 200 acres close to completion.
- V&T project moving forward, terminal site selected.

Robert Kershaw, Storey County

- Reno-Tahoe Industrial Park is booming. Utilizes a unique re-use water system.
- Projection for 35,000 new homes in next 5 years around industrial park.
- Virginia City sewer plant being expanded.
- McCarran Ranch river restoration plan underway with Washoe County and Nature Conservancy.
- Problems being experienced with wells at VC Highlands, quality and quantity.

Roger Mancebo, Pershing County

- Proposed land bill is off the table, disagreement over split estate issues.
- Aquatrac water exportation proposal, County is protesting.
- Industrial park has been sold, building ongoing.

PUBLIC COMMENTS (continued)

There were no public comments.

COUNCIL MEMBER COMMENTS

There were no comments, in anticipation of convening for the field trip.

FUTURE MEETING CONSIDERATIONS

SNPLMA Affordable Housing discussion.
Monte Cristo State Park

A SUCCESSFUL CONSERVATION EASEMENT IN PRACTICE

Jon Paul Kiel, Question 1 Program, presented an example of a successful conservation easement, Kirman Field, in northern Douglas County.

What is a conservation easement?

An easement is a voluntary agreement between a property owner and a land trust in which the land owner donates to the land trust specific property rights in exchange for the land trust's promise to protect the conservation values of the property forever. The land owner retains ownership of the land with the ability to sell it or pass it on to heirs, and may receive an income tax benefit from the easement donation.

How does a conservation easement work?

Each easement is unique to the site and the owner's personal wishes. A single feature can be preserved, development can be limited or the entire landscape may be conserved. For an example, you might give up the right to build additional residences while retaining the right to grow crops. Future owners will be bound by the terms of the easement. The Land Trust is responsible for ensuring that the terms of the easement are honored.

What kind of property qualifies for a conservation easement?

Any property with conservation value can be protected by an easement. This includes forests, wetlands, farms, wildlife habitat, beaches, scenic areas, recreational land, historic areas and property with educational, scientific, or cultural value.

Does a conservation easement allow public access?

Land owners who grant easements are not required to open their property to the public. Some landowners choose to give the public limited access rights, such as fishing or hiking - others choose not to allow public access.

How long does a conservation easement last?

A conservation easement lasts in perpetuity. Title to the land may change, but the easement remains.

Are there any tax benefits to a conservation easement?

When a landowner donates an easement, the IRS considers the donation a charitable gift, and this may reduce ones federal taxes. Additionally, property taxes may be reduced depending on how the value of the land is altered by the donation.

After the presentation, the meeting was continued to a field trip to Kirman Field hosted by **Laura Crane**, The Nature Conservancy.

- Kirman Field, located along the Carson River in northern Douglas County is a conservation easement on 1,027 acres. The Question 1 – funded easement was recorded on September 29, 2005.
- The binding contract allows the property owner to retain ownership on deed restricted land.
- The deed restrictions convey certain rights (property owner is compensated) including development potential and public access is allowed.
- The easement runs in perpetuity.
- All subsequent owners of the property are subject to the same restrictions.
- The easement will protect the floodplain, healthy wildlife habitat, reconnection of the river to the floodplain, and encourage community use of the resource.

ADJOURN

The meeting was adjourned at 4:40 pm.

Skip Canfield, AICP, Senior Planner

Meeting Recorder

These minutes should be considered draft minutes pending their approval at a future meeting of the State Land Use Planning Advisory Council. Corrections and changes could be made before approval.

The meeting was digitally recorded. Anyone wishing to receive or review the recording may call (775) 684-2723. The recording will be retained for three years.